

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

LEROY WILLIAMS,)
)
Plaintiff,)
v.)
STATE OF ALABAMA DEPARTMENT OF) CASE NO. 2:06-cv-658-ID
TRANSPORTATION and JOE MCINNES,)
etc.,)
)
Defendants.)

**MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE,
MOTION TO QUASH DEPOSITION NOTICES**

COME NOW Defendants State of Alabama Department of Transportation and Joe McInnes, by and through their undersigned counsel, and move this Court to issue a protective order, or in the alternative, to quash certain deposition notices for the depositions of Alabama Department of Transportation employees Don Arkle and Thomas Lewis, and as grounds therefor state as follows:

1. Plaintiff's counsel has noticed the depositions of Don Arkle and Thomas Lewis for Thursday, May 3, 2007. (See notices attached hereto as "Exhibit A.")
2. Undersigned counsel first became aware of Plaintiff's counsel's desire to conduct the depositions by virtue of a telephone message, received by clerical staff, on Friday, April 27, 2007, while counsel was out of the office. This message was not read by undersigned counsel until Monday, April 30, 2007. Counsel of record in this matter, in addition to the undersigned, include Jim R. Ippolito, Jr., and R. Mitchell Alton III, neither of whom was contacted concerning depositions.
3. On Monday, April 27, 2007, the undersigned counsel personally spoke to Plaintiff's counsel regarding the scheduling of depositions for Don Arkle and Thomas Lewis and

advised Plaintiff's counsel that, due to the shortness of notice and other scheduled matters, scheduling depositions for the week of April 30 through May 4, 2007, was impracticable. Undersigned counsel advised Plaintiff's counsel that he would ascertain available dates for these deposition and advise him accordingly.

4. The Plaintiff's noticing the depositions for these two employees upon such short notice works an unreasonable hardship upon both Defendants' counsel and the employees and is not "reasonable notice" as required by Rule 30(b)(1) of the Federal Rules of Civil Procedure.

Wherefore, premises considered, Defendants move this Court to issue a protective order or, in the alternative, quash the deposition notices for these employees until such other reasonable time as may be agreed upon by the parties.

RESPECTFULLY SUBMITTED
TROY KING
ATTORNEY GENERAL

s/ Andrew W. Redd
Jim R. Ippolito, Jr. (IPP001)
Assistant Attorney General
Chief Counsel
Andrew W. Redd (RED001)
R. Mitchell Alton, III (ALT003)
Assistant Attorneys General
Assistant Counsel

ADDRESS OF COUNSEL:

State of Alabama Department of Transportation
1409 Coliseum Boulevard
Montgomery, Alabama 36110
Telephone: (334) 242-6350
Facsimile: (334) 264-4359
redda@dot.state.al.us

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LEROY WILLIAMS,)
Plaintiff,)
v.)
STATE OF ALABAMA DEPARTMENT OF) CASE NO. 2:06-cv-658-ID
TRANSPORTATION and JOE MCINNES,)
etc.,)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that, on May 1, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECT system, which will send notification to the following:

Mr. Russell W. Adams, Esq.
Wiggins, Childs, Quinn & Pantazis, L.L.C.
Attorneys at Law
301 19th Street, North
Birmingham, Alabama 35203
ATTORNEY FOR PLAINTIFF

s/ Andrew W. Redd
Andrew W. Redd (RED001)
Assistant Attorney General
Assistant Counsel

ADDRESS OF COUNSEL:

State of Alabama Department of Transportation
1409 Coliseum Boulevard
Montgomery, Alabama 36110
(334) 242-6350 (office)
(334) 264-4359 (facsimile)
redda@dot.state.al.us

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ALABAMA DEPARTMENT OF)
TRANSPORTATION,)
Plaintiff,)
v.) CASE NO. CV-2006-2852
BIBB COUNTY OIL, INC. , *etc.*, *et al.*,)
Defendants.)

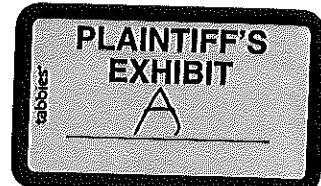
NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

Plaintiff Alabama Department of Transportation ("ALDOT") hereby serves notice to the Court that, on or about **August 9, 2006**, it served the following discovery documents on Defendants in this cause, by U.S. Mail, First Class Postage prepaid:

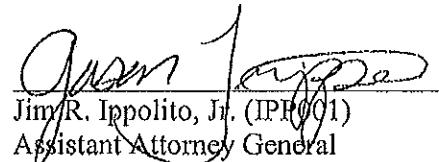
1. Plaintiff's First Consolidated Discovery Request to Hughes & Hughes Food Stores, Inc. (since withdrawn);
2. Plaintiff's First Consolidated Discovery Request to Brian Wesley Gerald;
3. Plaintiff's First Consolidated Discovery Request to Bibb County Oil, Inc.; and
4. Plaintiff's First Consolidated Discovery Request to Andalusia Enterprises, Inc.

Additionally, Plaintiff hereby serves notice to the Court that, on this date, it has served the following discovery document on Defendants in this cause, by U.S. Mail, First Class Postage prepaid:

5. Notice of Deposition of Defendant Brian Wesley Gerald.



RESPECTFULLY SUBMITTED
TROY KING
ATTORNEY GENERAL



Jim R. Ippolito, Jr. (PRI01)
Assistant Attorney General
Chief Counsel

Jason A. Trippe (TRI012)
Assistant Attorney General
Assistant Counsel

ADDRESS OF COUNSEL:

State of Alabama Department of Transportation
1409 Coliseum Boulevard
Montgomery, Alabama 36110
Telephone: (334) 242-6350
Facsimile: (334) 264-4359
trippej@dot.state.al.us

CERTIFICATE OF SERVICE

I certify that on this 15th day of September, 2006 I have served the foregoing on the following by placing copies thereof, addressed to them as indicated below, in United States Mail, First Class postage prepaid:

Wayne Morse, Esq.
MORSE & DOLAN, P.C.
2102 Sixth Avenue, North, Suite 700
Birmingham, Alabama 35203
(205) 327-8376

ATTORNEY FOR DEFENDANTS HUGHES & HUGHES FOOD STORES, INC., BIBB COUNTY OIL, INC., ANDALUSIA ENTERPRISES, INC., IRA HUGHES, ROBERT HUGHES, and SHERRYL HUGHES

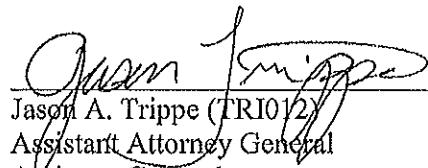
P. Ted Colquett, Esq.
HALL, CONERLY & BOLVIG, P.C.
505 20th Street, North, Suite 1400
Birmingham, Alabama 35203
(205) 251-8143

ATTORNEY FOR DEFENDANT
BRIAN WESLEY GERALD

Matthew J. Landreau, Esq.
C. Britton Bonner, Esq.
BONNER, LANDREAU KINGREA, LLC
350 North Alston Street
Foley, Alabama 36535
(334) 943-5727
ATTORNEYS FOR HEPACO, INC.

:

Steele B. Windle, III, Esq.
SMITH, CURRIE & HANCOCK, LLP
1023 West Morehead Street, Suite 301
Charlotte, North Carolina 28208
ATTORNEY FOR HEPACO, INC


Jason A. Trippe (TRI012)
Assistant Attorney General
Assistant Counsel

ADDRESS OF COUNSEL:

State of Alabama Department of Transportation
1409 Coliseum Boulevard
Montgomery, Alabama 36110
(334) 242-6350 (office)
(334) 264-4359 (facsimile)



ALABAMA DEPARTMENT OF TRANSPORTATION

Legal Bureau
1409 Coliseum Boulevard
Montgomery, Alabama 36110



Telephone (334) 242-6350 – Fax (334) 264-4359

Bob Riley
Governor

Joe McInnes
Transportation Director

September 14, 2006

BY CERTIFIED MAIL AND ELECTRONIC MAIL

Mr. P. Ted Colquett, Esq.
HALL, CONERLY & BOLVIG, P.C.
505 Twentieth Street, North, Suite 1400
Birmingham, Alabama 35203

RE: *State of Alabama Department of Transportation v. Bibb County Oil, Inc., etc., et al.*,
Jefferson County Circuit Court
CV-2006-2852
Outstanding Discovery and Responses to Requests for Admission

Dear Ted:

On August 9, 2006, ALDOT served you with Plaintiff's First Consolidated Discovery Requests to Defendants Brian Wesley Gerald, Bibb County Oil, Inc., and Andalusia Enterprises, Inc. These discovery requests included interrogatories, requests for production and requests for admissions. To date ALDOT has not received responses to the interrogatories or requests for production from these Defendants. Enclosed are copies of the discovery requests. Please contact me to discuss when the Department should expect to receive responses to these discovery requests.

In addition, several Requests for Admission were not sufficiently answered:

First, Request for Admission No. 5 to Defendant Brian Wesley Gerald asks if Mr. Gerald was in the line and scope of his employment or agency. Mr. Gerald is aware of who he was working for on October 21, 2006. Please provide a full response to this request for admission.

Next, in Request for Admission No. 7 to Defendants Bibb County Oil, Inc., and Andalusia Enterprise, Inc., your clients' answers indicate that this request does not seek admission of material facts relative to the occurrence at issue. ALDOT disagrees. It is material who owns each corporation and their relationship for the purpose of determining liability and damages. Please provide a full response to this request for admission.

Please provide a full response to Request for Admission No. 4 to Defendant Andalusia Enterprises, Inc. If Defendant Andalusia Enterprises, Inc., knew Defendant Gerald was the driver of the vehicle that destroyed the State's bridge, then it knows whether he was working for it or Bibb County Oil or Hughes & Hughes Food Stores.

I request you provide this information within the next seven (7) days. If I have not received responses, I will be forced to seek the assistance of the Court.



Mr. P. Ted Colquett, Esq.

Page 2

September 14, 2006

If you should have any questions regarding this matter, please contact me at (334) 242-6350.

Sincerely,



A handwritten signature in black ink, appearing to read "Jason A. Trippé".

Jason A. Trippé
Assistant Counsel

Enclosures

cc: Wayne Morse, Esq.
(by email only)



ALABAMA DEPARTMENT OF TRANSPORTATION

Legal Bureau
1409 Coliseum Boulevard
Montgomery, Alabama 36110



Telephone (334) 242-6350 – Fax (334) 264-4359

Bob Riley
Governor

Joe McInnes
Transportation Director

September 26, 2006

BY CERTIFIED MAIL AND ELECTRONIC MAIL

Mr. P. Ted Colquett, Esq.
HALL, CONERLY & BOLVIG, P.C.
505 Twentieth Street, North, Suite 1400
Birmingham, Alabama 35203

RE: *State of Alabama Department of Transportation v. Bibb County Oil, Inc., etc., et al.*,
Jefferson County Circuit Court
CV-2006-2852

Dear Ted:

Thank you for contacting me today about resolving the issues surrounding the Department's Motion for Default and your client's responses. Pursuant to our agreement, the Department will file a motion to withdraw its Motion for Entry of Default against Bibb County Oil, Inc., Andalusia Enterprises, Inc., and Ira Hughes. Thereafter, you will withdraw your motions in response filed on September 23, 2006 and accept service of the Summons and Complaint for all defendants. In addition, you agree to provide me dates that you are available for the deposition of Brian Wesley Gerald by the end of the week. You indicated that you would prepare answers to the outstanding discovery and file motions to dismiss the individual defendants. We agreed to argue the merits of those motions before Judge Vance on Friday, October 6, 2006.

I trust this accurately summarizes our conversation. If not, please contact me at your earliest convenience. Thank you for your cooperation and assistance.

Sincerely,

A handwritten signature of Jason A. Tippe.

Jason A. Tippe
Assistant Counsel

PLAINTIFF'S
EXHIBIT

tabbies



ALABAMA DEPARTMENT OF TRANSPORTATION

Legal Bureau
1409 Coliseum Boulevard
Montgomery, Alabama 36110

Telephone (334) 242-6350 – Fax (334) 264-4359

Bob Riley
Governor



Joe McInnis
Transportation Director

October 11, 2006

VIA FACSIMILE & U.S. MAIL

Mr. P. Ted Colquett, Esq.
HALL, CONERLY & BOLVIG, P.C.
505 Twentieth Street, North, Suite 1400
Birmingham, Alabama 35203

Dear Ted:

RE: *State of Alabama Department of Transportation v. Bibb County Oil, Inc., et al.*
Jefferson County Circuit Court
CV-2006-2852
Outstanding Discovery, Responses to Requests for Admission, and Deposition

On August 9, 2006, ALDOT served you with Plaintiff's First Consolidated Discovery Requests to Defendants Brian Wesley Gerald, Bibb County Oil, Inc., and Andalusia Enterprises, Inc. These discovery requests included interrogatories, requests for production and requests for admissions. Thereafter, on September 14, 2006, I sent you a letter requesting answers to these outstanding discovery requests. To date ALDOT has not received responses to the interrogatories or requests for production from these Defendants. Enclosed are copies of the discovery requests.

In addition, several Requests for Admission were not sufficiently answered:

First, Request for Admission No. 5 to Defendant Brian Wesley Gerald asks if Mr. Gerald was in the line and scope of his employment or agency. Mr. Gerald is aware of who he was working for on October 21, 2006. Please provide a full response to this request for admission.

Next, in Request for Admission No. 7 to Defendants Bibb County Oil, Inc., and Andalusia Enterprise, Inc., your clients' answers indicate that this request does not seek admission of material facts relative to the occurrence at issue. ALDOT disagrees. It is material who owns each corporation and their relationship for the purpose of determining liability and damages. Please provide a full response to this request for admission.

Please provide a full response to Request for Admission No. 4 to Defendant Andalusia Enterprises, Inc. If Defendant Andalusia Enterprises, Inc., knew Defendant Gerald was the driver of the vehicle that destroyed the State's bridge, then it knows whether he was working for it or Bibb County Oil or Hughes & Hughes Food Stores.

Furthermore, on or about September 26, 2006 you agreed to provide dates for the availability of Brian Wesley Gerald for deposition. We have made several reasonable attempts to depose Defendant Gerald. However, you have not provided any dates for the deposition. Please provide me a list of dates that you and Mr. Gerald are available for a deposition.

P. Ted Colquett, Esq.
Page 2
October 11, 2006

I request you provide this information within the next seven (7) days. If I have not received responses, I will be forced to seek the assistance of the Court.

If you should have any questions regarding this matter, please contact me at (334) 242-6350.

Sincerely,


Jason Trippe
Assistant Counsel

jat/maf

Enclosures

cc: Steele B. Windle, III, Esq.
Wayne Morse, Esq.
Mathew J. Landreau, Esq.

Trippe, Jason

From: Ted Colquett [Ted.Colquett@hallconerly.com]
Sent: Thursday, January 18, 2007 4:28 PM
To: Redd, Andrew W.; Trippe, Jason
Cc: Lindsey Cook
Subject: ALDOT v. Bibb County Oil

Sensitivity: Confidential

Amy from Judge Vance's office called a few moments ago, and he is canceling the status conference scheduled for tomorrow at 11:00 a.m. I will have discovery to you on Monday. Thanks for bearing with me.

Kindest personal regards.

P. TED COLQUETT
Member
Hall, Conerly & Bolvig, P.C.
1400 Financial Center
505 - 20th Street North
Birmingham, Alabama 35203
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(205) 251-1141 Direct Telephone
(205) 326-3202 Telecopier

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Trippe, Jason

From: Trippe, Jason
Sent: Monday, January 29, 2007 9:09 AM
To: 'Ted Colquett'
Cc: 'morse@wskllc.com'; Redd, Andrew W.
Subject: RE: ALDOT v. Bibb County Oil Discovery

Sensitivity: Confidential

Ted:

As you know, there have not been any depositions in this case. We would like to get moving on the deposition of Brian Wesley Gerald. Please give me some dates you are available in late February and early March. We want to go ahead and agree on a date so that we don't have to ask the judge to compel his deposition. Also, you mentioned having the remaining discovery to us by last Monday. We haven't received anything yet. Could you give me an update?

We are in receipt of discovery from you and Wayne. The most efficient way to answer the requests is for ALDOT to allow you to examine our records. We certainly will answer all requests. However, a review of the documents will produce what you requested and we can better answer the discovery requests after you've viewed the documents. Please set up a meeting with Charles Mallone and Mike Mahaffey at our 3rd Division Office in Birmingham (205-526-5606). They will give you access to the documents. Tab or mark the docs you want and the office will make copies that I'll review and then send to you.

Thanks,

Jason A. Trippe
 Assistant Counsel
 Alabama Department of Transportation
 Legal Bureau
 1409 Coliseum Blvd.
 Montgomery, Alabama 36110
 PH: 334-242-6625
 FAX: 334-264-4359

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-----Original Message-----

From: Ted Colquett [mailto:Ted.Colquett@hallconerly.com]
 Sent: Thursday, January 18, 2007 4:28 PM
 To: Redd, Andrew W.; Trippe, Jason
 Cc: Lindsey Cook
 Subject: ALDOT v. Bibb County Oil
 Sensitivity: Confidential

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Kindest personal regards.

P. TED COLQUETT

Member

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(205) 251-1141 Direct Telephone
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Trippe, Jason

From: Trippe, Jason
Sent: Tuesday, February 27, 2007 9:41 AM
To: 'TED.COLQUETT@HALLCONERLY.COM'
Cc: Redd, Andrew W.
Subject: Bibb County Oil, Inc. - State of Alabama Department of Transportation v. Bibb County Oil, Inc.

Ted:

Thank you for offering to mediate these claims. ALDOT agrees that mediation is warranted in this case. However, prior to agreeing to mediation, we are requesting that all discovery be completed. You've agreed to answer our discovery numerous times recently but we have not received anything. We also want to depose Defendants Gerald, Ira Hughes, Sherryl Hughes and Robert Hughes. Please provide a list of dates that your clients are available for depositions in late March or early April. Here are some dates: March 27, 28 and April 3, 4, 5, 12, 17, 18 and 19. Please answer the discovery and provide deposition dates by March 16 or we will file motions to compel. Once we receive all of the requested discovery we will examine it and then we can agree to a date for mediation. I look forward to resolving these issues with you.

Thank you,

Jason A. Trippe
Assistant Counsel
Alabama Department of Transportation
Legal Bureau
1409 Coliseum Blvd.
Montgomery, Alabama 36110
PH: 334-242-6625
FAX: 334-264-4359

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